IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.08.2007

Coram:

The Honourable Mr. Justice V. DHANAPALAN

W.P. No.25908 of 2007 & M.P. No.1 of 2007

J.K.K. Nataraja Dental College & Hospital
230, Salem Main Road
Komarapalayam 638 183
Namakkal District
Tamil Nadu Petitioner

vs.

1 The Union of India
represented by Secretary to Government
Ministry of Health & Family Welfare
Nirman Bhavan
New Delhi

2 Dental Council of India
represented by its Secretary
Kotla Road
Temple Lane
New Delhi 110 002 Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus as stated therein.

For petitioner Mr. Mr. R. Muthukumarasamy, S.C.
For Mr. A. Jenasenan

For 1st respondent Mr. V.T. Gopalan
Addl. Solicitor General of India
assisted by Mr. P. Wilson
Assistant Solicitor General of India

For 2nd respondent Mr. P. Chandrasekaran,

ORDER

The petitioner has filed this petition seeking a writ of certiorarified mandamus calling for the proceedings of the first respondent made in F.No.V.12017/2006-DE dated 23.07.2007 and the decision of the second respondent dated 09.07.2007 made in DE.3(36)-2007 B-7230 and

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quash the said proceedings of respondents 1 and 2 respectively and consequently direct the respondents to accord permission to the petitioners' college for the increase in the intake of students from 40 to 100 in the B.D.S. from the academic year 2007-2008 .

2. The case of the petitioner in a nutshell, is as under:

> The petitioner which is a Dental College and Hospital was established in the year 1987 with an intake of 40 students and is affiliated to Dr. MGR Medical University. Desirous of increasing its intake to 100 students for the B.D.S. Course, the petitioner submitted an application in September 2006 to the first respondent enclosing Essentiality Certificate issued by the State Government. Inspection was carried out on 16 & 17.05.2007 by a team deputed by the second respondent. Despite the direction of the inspection team to consider the petitioner's application for additional intake, the second respondent, vide its letter dated 29.05.2007 addressed to the petitioner, stated that it is not recommending to the Central Government and further directed the petitioner to furnish compliance report in respect of certain deficiencies on or before 04.06.2007. The petitioner too, having rectified the said deficiencies, submitted its compliance report on 04.06.2007 to the second respondent and requested for passing of appropriate orders. Since no response was forthcoming from the second respondent, the petitioner, vide its letter dated 09.07.2007 drew the attention of the second respondent with regard to the pendency of its claim pursuant to which, the second respondent, by its letter dated 13.07.2007, informed that it has forwarded the petitioner's request to the first respondent. Subsequent thereto, the first respondent passed an order dated 23.07.2007 stating that it has decided not to grant permission for increase in intake for the academic year 2007-2008 based on the second respondent's letter dated 09.07.2007. Calling in question the legality of this order of the first respondent, the present writ petition.

3. The second respondent has filed its counter contending that the petitioner submitted its application to the first respondent on 30.09.2007 who in turn forwarded the same to it on 22.01.2007 as against the deadline of 31.12.2006 and it has sent a letter on 24.04.2007 to the petitioner proposing to conduct inspection in the first week of May 2007 and it was only the petitioner which sought postponement of the inspection due to road expansion work undertaken by the National Highways Authority of India. The second respondent has further contended that the petitioner's request for postponement of inspection was acceded to and inspection was conducted on 16th & 17th May 2007 and it has sent its recommendation to the first respondent on 15.06.2007 (adhering to the time-frame) expressing its disapproval of the petitioner's application based on the inspection report

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submitted by the inspection team and the failure on the part of the petitioner to rectify the deficiencies.

4. Heard Mr. R. Muthukumarasamy, learned Senior Counsel appearing for the petitioner, Mr. V.T. Gopalan, learned Additional Solicitor General of India appearing for the first respondent and Mr. P. Chandrasekaran, learned Standing Counsel for the second respondent.

5. Attacking the reason assigned by the second respondent in its letter dated 09.07.2007 addressed to the first respondent that the last date for submission of its recommendations to the first respondent was over on 15.06.2007, the learned Senior Counsel has vehemently argued that the second respondent has caused inspection belatedly on 16 & 17.05.2007 when the petitioner has submitted its application in September 2006 itself, i.e. about eight months prior to the date of inspection. Pointing out that the first respondent ought to have forwarded the petitioner's application to the second respondent on or before 31.12.2006 but it has forwarded the same to the second respondent only on 22.01.2007 thereby causing a delay of about 21 days, the learned Senior Counsel appearing for the petitioner has contended that the petitioner cannot be made to suffer for the laches on the part of the respondents 1 and 2. On the point of deficiency that one Dr. Sharada was not a Professor in Oral Pathology, the learned Senior Counsel has contended that on coming to know that there was impersonation in this regard, the petitioner has filed a criminal complaint before the Komarapalayam Police on 07.06.2007 and has also kept the second respondent apprised of this in its compliance report and has replaced one Dr. Rajeswari in place of Dr. Sharada. As regards the deficiency pointed out by the second respondent that certain members of the faculty were not present on both the days of inspection, the learned Senior Counsel has contended that this cannot be termed as a deficiency particularly when the petitioner has produced enough materials on record to prove that the said members of the faculty were employed by it.

6. The learned Senior Counsel appearing for the petitioner, while drawing the attention of this Court on the aspect that the petitioner has produced 15 batches of B.D.S. students and is equipped with necessary infrastructure including the members of faculty, has relied on a Government of India letter dated 30.08.2006 to indicate that 5% relaxation for teaching faculty is allowed in dental colleges. While concluding his arguments, the learned Senior Counsel appearing for the petitioner has pointed out notwithstanding the recommendations of the second respondent, the first respondent has got ample powers to grant recognition for additional intake to the petitioner.

7. Contending contra, the learned Additional Solicitor General of India, at the foremost, has contended that, by the impugned order, the first respondent has not rejected the claim of the petitioner in entirety, but, it has rather decided not to grant recognition for the academic year 2007-2008 only and the doors are still wide open to the petitioner to get recognition for the next academic year by rectifying the deficiencies

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pointed out by the second respondent within the specified time. In reply to the contention of the learned Senior Counsel appearing for the petitioner that the first respondent can grant recognition to the petitioner even disregarding the deficiencies pointed out by the second respondent, it is the earnest submission of the learned Additional Solicitor General that the first respondent cannot disregard or bye-pass the recommendations of the second respondent which is a statutory authority established for the purpose of monitoring the functioning of Dental Colleges in the country. He has further argued that when the Supreme Court has held at least in more than one case that the Central Government has to strictly adhere to the time schedule prescribed in the Dental Council of India Regulations, 2006, the first respondent has rightly expressed its inability to consider the case of the petitioner for the academic year 2006-2007.

8. On the other hand, the learned Standing Counsel for the second respondent has contended that the first respondent, vide its letter dated 22.01.2007 forwarded to the second respondent the petitioner's application for increase in intake and the second respondent informed the petitioner that it would take up the inspection during 03 & 04.05.2007 and that it was only the petitioner which sought postponement of inspection to the third week of May 2007. He has further pointed out that a meeting of the Executive Committee was held on 06.05.2007 and had the petitioner agreed for the inspection on 03 & 04.05.2007, as proposed by the second respondent, the Executive Committee would have considered the case of the petitioner. It is his further contention that not being satisfied with the report of the inspection team, the second respondent by its letter dated 15.06.2007 to the first respondent, expressed its disapproval to recommend the scheme of the petitioner and based on the letter dated 03.07.2007 from the first respondent requesting the second respondent to reconsider its negative recommendations, the latter scrutinised the records including the compliance report and after discussion and deliberation, reiterated its earlier recommendation to the first respondent, pointing out thereby the deficiencies which still existed based on which the first respondent came to a conclusion not to consider the case of the petitioner for the academic year 2007-2008.

9 In support of his contention that this Court cannot issue a writ of mandamus straightaway and this Court can only remit the matter to the second respondent for consideration afresh, the learned Standing Counsel for the second respondent has relied on a judgment of the Supreme Court reported in (2001) 5 SCC 486 in the matter of Dental Council of India vs. Subharti K.K.B. Charitable Trust and another: (para 8)

> "At the outset, we would reiterate that under Section 10-A of the Dentists Act, 1948, it is the function of the Central Government to accord approval for establishing the Dental College and the High Court ought not to have passed the order straightaway according the approval despite the inspection report submitted by the DCI and the order refusing to grant such

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permission passed by the Central Government. In such cases, if the High Court finds that the order passed by the Central Government is dehors the statutory provisions or arbitrary for some reason, the course open to it is to remit the matter to DCI for reinspection of the establishment and for reconsideration by the Central Government rather than to issue a writ of mandamus as quoted above."

But, the learned counsel for the petitioner has contended that the above ruling of the Supreme Court cannot be made applicable to this case as the above referred to appeal was filed by the second respondent.

10. On a perusal of the impugned order 09.07.2007 passed by the second respondent, it can be seen that the petitioner's application seeking permission for additional intake has not been considered for two reasons. The first reason is that the last date for submission of the second respondent's recommendations to the first respondent i.e. 15.06.2007, has expired and the second reason is that the petitioner has not rectified the deficiencies despite being afforded reasonable opportunities. Similarly, the impugned order dated 23.07.2007 has been passed by the first respondent based on the impugned order of the first respondent and also taking into account the direction of the Supreme Court in its various judgments to strictly adhere to the time schedule prescribed in the Dental Council of India Regulations, 2006. Thus, the main points which emerge for consideration in this petition are whether there is any delay caused by the respondents and whether the second respondent in rejecting the case of the petitioner based on the deficiencies.

11. As for the first point for consideration is concerned, it would be useful to refer to the Gazette Notification dated 16.01.2006 which prescribes the time-table for each stage of processing of an application and the same runs thus:

| S.No. | Stage of processing | Time Schedule for BDS |
|---|---|---|
| 1 | Receipt of applications by the Central Government | From 1st August to 30th September (both days inclusive) of any year |
| 2 | Forwarding of applications by the Central Government to the Dental Council of India for technical scrutiny | Upto 31st December |
| 3 | Recommendations of DCI to the Central Government | Upto 15th June |
| 4 | Issue of Letter of Permission by Central Government | Upto 15th July |

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12. It may also be useful to have a glance of the various dates from the following tabular column on which the parties to this petition have performed various tasks required to be completed at various stages:

| S.No. | Action to be performed by parties | Date on which parties have performed action |
|---|---|---|
| 1 | Submission of application by petitioner to first respondent | 30th September 2007 |
| 2 | Forwarding of application by first respondent to second respondent | 22nd Jan. 2007<br>as against 31st December 2007 |
| 3 | Letter sent by second respondent with regard to its proposed inspection of the petitioner institution | 24thApril 2007 |
| 4 | Letter sent by petitioner to second respondent seeking postponement of inspection | 1st May 2007 |
| 5 | Inspection carried out by the second respondent | 16th & 17th May 2007 |
| 6 | Recommendation of second respondent to first respondent | 15th June 2007 |

13. From the above tabular column, it can apparently be seen that the first respondent has forwarded the petitioner's application to the second respondent on 22.01.2007 as against the deadline of 31.12.2006 and no reason whatsoever is assigned by the first respondent for this delay. Secondly, it can also be seen that though the first respondent has forwarded the petitioner's application on 22.01.2007, the second respondent has written to the petitioner of its proposal to conduct inspection only on 24.01.2007 and hereagain, no reason whatsoever has been attributed by the second respondent for this delay of about two months in writing to the petitioner to conduct inspection. Of course, the petitioner too, for its part, has sought postponement of the inspection due to road expansion work undertaken by National Highways Authority of India, which is a public cause and the time sought by the petitioner is negligible and beyond its control. Thus, when the respondents themselves have not adhered to the time schedule prescribed in the Dental Council of India Regulations, 2006, as rightly argued by the learned Senior Counsel for the petitioner, the petitioner cannot be made to suffer for the laches on the part of both the respondents. It is to be noted the first respondent itself which says in its impugned order that the directions of the Supreme Court with regard to keeping up of time schedule have to be strictly adhered to, has not done its part of forwarding the petitioner's

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application to the second respondent in time. Of course, the petitioner could have come before this Court immediately after the first respondent failed to adhere to the time schedule. But, at the same time, the first respondent cannot cite, as an excuse, the failure of the petitioner to approach this Court. Taking all these aspects into consideration, those portions of the impugned orders of the first and second respondents to the effect that the last date for them to take action is over cannot be sustained and they are accordingly quashed.

14. While coming to the second aspect of rejection of the petitioner's case by the second respondent, it may be useful to refer to the relevant portion of the impugned order which reads as under:

> "Since the college authority has not made good the following deficiencies even after giving the reasonable opportunities, and the last date for submission of DCI's recommendations to the Government of India is 15.06.2007, the Scheme/Application of J.K.K. Natrajah Dental College, Tamil Nadu for increase of seats from 40 to 100 in BDS course to the Govt. of India for disapproval:-
>
> 1 There is deficiency of one Professor in the department of Oral Pathology since the college authority has misled the Council by furnishing the false affidavit and declaration in respect of Dr.P.Sharda, Professor, Oral Pathology for claiming as working in their institution but as per enquiry from Dr. P. Sharda, she confirmed that she has not joined J.K.K. Natrajah Dental College and the said college has shown her name at their own and the strict action against the college authorities may be taken. The Council is not in agreement with explanation given by the Secretary, J.K.K. Natrajah Dental College and Hospital, Komarapalayam as the forgery pointed out by the Council was investigated after the discrepancies was brought to the notice of the management which would otherwise have been overlooked (copy of the compliance from the Secretary, JKK Natrajah Dental College and Hospital, is attached for ready reference).
>
> 2 There is deficiency of one Reader in the department of Community Dentistry since Dr. Abinaya, Reader in Community Dentistry is not accepted as she is having MDS qualification in the subject of Periodontics.
>
> 3 There is deficiency of one Reader in the Department of Anatomy since Dr. S. Devadoss Sivaprakasam, Reader in Anatomy has not furnished the

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original affidavit and not being paid as per UGS pay scale

4 There is deficiency of one Reader in the Department of Microbiology since Dr. Vijaya Chandra Bose, Reader in Microbiology has not furnished the original affidavit and not being paid as per the UGS pay scale.

5 There is deficiency of one Reader in the Department of General Pathology since Dr. G. Vijayalaxmi, Reader in General Pathology has not furnished the original affidavit and relieving order from the previous institution.

6 The following teaching faculty is not accepted since they were not present on both the days of inspection:

i Reader in Prosthodontics Dr. Angela Ray Chaudhuri
ii Lecturer in Oral Pathology Dr. K. Venkatesh
iii Lecturer in Periodontics Dr. P. Kavitha
iv Lecturer in Periodontics Dr. O. Obliraj"

15. It is to be noted that pursuant to the second respondent's proceedings dated 29.05.2007 pointing out various deficiencies, the petitioner has sent its compliance report on 04.06.2007 on or before which date it was required to furnish the same explaining compliance of each and every deficiency pointed out by the second respondent. But, the second respondent, without properly considering the compliance report of the petitioner with due application of mind, has stuck to the deficiencies pointed out by the inspection team despite the recommendation of the inspection team that the petitioner's case may be considered if the observations pointed out by it are attended to by the petitioner. From a perusal of the materials available on record, it is seen that among the various deficiencies pointed out by the second respondent, only deficiency no.2 which states that one Dr. Abinaya, Reader in Community Dentistry cannot be accepted as she is having M.D.S. Qualification in the subject of Periodontics instead of Community Dentistry, is not rectified by the petitioner. The explanation given by the petitioner is that her teaching experience of five years can be considered since there is acute shortage of teachers with M.D.S. qualification in the specialty of Community Dentistry. All other deficiencies pointed out by the second respondent have been duly replied to by the petitioner; yet, as already stated, the second respondent, without assigning any reason, has stuck to the deficiencies pointed out by it and has stated that the petitioner has not

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rectified the deficiencies even after being afforded reasonable opportunities and accordingly expressed its disapproval to the first respondent for consideration of the petitioner's case. This stand of the second respondent without due application of mind, cannot be accepted.

16. Therefore, on an overall consideration of the facts and circumstances of the case, since this Court feels that the case of the petitioner deserves a re-look, the second respondent is directed to reconsider the petitioner's case afresh in the light of the compliance report submitted by the petitioner, with due application of mind, in respect of each and every compliance made by the petitioner and accordingly, send its recommendations to the first respondent in accordance with Rule 10(A) of the Dentists Act. Thereafter, based on the second respondent's recommendations, the first respondent is directed to pass appropriate orders on the petitioner's application in accordance with the rules and regulations and grant permission to the petitioner for increase in intake from 40 students to 100 students.

In fine, the writ petition is allowed in part with the above directions. No costs. Consequently, connected M.P. is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Cad

To

1 The Secretary to Government of India
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi

2 The Secretary
Dental Council of India
Kotla Road
Temple Lane, New Delhi 110 002

1 CC To Mr.P.Wilson, ASGI, SR NO.51537.
1 CC To Mr.P.Chandrasekaran, SCGSC, SR NO.51454.
3 CC To Mr.A.Jenasenan, Advocate, SR NO.51412.

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